

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 815 of 1993

with

CRIMINAL APPEAL NO. 887 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
1 to 5 : No

STATE OF GUJARAT

Versus

BHANUBHAI RANCHHODBHAI

Appearance:

MR KC SHAH, ADDL.PUBLIC PROSECUTOR for Petitioner

MR YS LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 03/04/96

COMMON ORAL JUDGEMENT

The present orders shall govern the disposal of these two proceedings, namely, Miscellaneous Criminal Application No. 815 of 1993 and Criminal Appeal No. 887 of 1992.

The Application is for the condonation of delay of 45 days in filing the appeal against the orders of acquittal before this Court. The Rule has been given. It requires to be made absolute regard being had to the reasons shown in the application for the condonation of delay. The Miscellaneous Criminal Application is allowed and the delay is condoned. Rule is made absolute accordingly.

Coming to the Criminal Appeal No.887 of 1992, it shall have to be said that, the same requires a rejection. The respondent-accused came to be acquitted of the offences punishable under Sections 2, 7, and 16 of the Prevention of Food Adulteration Act, 1954. The case of the Food Inspector was that, he had a visit of the shop of the accused on December 28, 1981 and had purchased the sample of Chilli powder. Later on, the same was found to have been adulterated. The respondent-accused was charged for the alleged commission of the above said offences. The learned Trial Magistrate was of the opinion that the case of the prosecution against the accused was not proved beyond reasonable doubt, and therefore, the respondent-accused deserve an acquittal. This view of the learned Trial Magistrate has resulted into the acquittal orders dated 29th February 1992. The said orders are in challenge in the present acquittal appeal before me.

The learned Trial Magistrate was of the view that the necessary procedure for taking the sample was not observed and that the complainant-Food Inspector has utilised the articles lying in the shop of the respondent-accused for the collection of the sample. Even the piece of paper in which the chilly powder as a sample was purchased and packed was also collected from the shop of the respondent-accused and there was, absolutely, no evidence regarding the condition of the said piece of paper. There was no evidence that the above said piece of paper in which the sample was collected was clear, dried and without any colour or smell. These facts have led the learned Trial Magistrate to warrant a conclusion that the case was not proved beyond reasonable doubt.

Upon the re-reading of the entire evidence with the assistance of learned Government Counsel Mr. Shah, it is not possible for me to take a different view. It is abundantly clear that, the Food Inspector who had gone to the shop of the respondent-accused for purchase of the sample of chilly powder had no implements of his own and

that, he was required to have a resort to the implements which were lying in the shop of the accused. The piece of paper in which the sample was collected was also having the position detailed above. In view of this, in my opinion, the other view is not permissible. The present Criminal Appeal, therefore, fails and the same requires to be rejected. It is hereby accordingly rejected.
